

PAPER – 5 : BUSINESS LAWS AND ETHICS
SUGGESTED ANSWERS
SECTION – A

1.

- (i) (D)
- (ii) (C)
- (iii) (A)
- (iv) (C)
- (v) (B)
- (vi) (D)
- (vii) (A)
- (viii) (A)
- (ix) (D)
- (x) (A)
- (xi) (D)
- (xii) (C)
- (xiii) (A)
- (xiv) (C)
- (xv) (C)

SECTION – B

2. (a)

Enforcement of contingent contract

Section 32 of The Indian Contract Act, 1872 provides that contingent contracts to do or not to do anything, if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Examples: A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refused to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

Section 33 The Indian Contract Act, 1872 provides for enforcement of contracts contingent on an event not happening. This section provides that contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Example: A agrees to pay B a sum of money, if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Section 34 The Indian Contract Act, 1872 discusses about deemed impossible contract. The said section provides that if the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Example: A agrees to pay B a sum of money if B marries C, C marries D. The marriage of B to C now be considered impossible; although it is possible that D may die and that C may afterwards marry B.

Section 35 The Indian Contract Act, 1872 provides for the contracts which are contingent on happening of specified event within fixed time. The said section provides that contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if, at the expiration of the

time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible. Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen.

Examples: A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year and becomes void if the ship is burnt within the year.

2. (b)

Bailor's duty in context of Bailment:

Section 150 lays down three duties, namely-

- 1 It is the duty of the bailor to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks;
- 2 If the bailor does not make such disclosure and some loss or damage results, he is responsible for so much of it as arises to the bailee directly from such faults;
- 3 If the goods are bailed for hire, the bailor is responsible for damage arising to the bailee directly from such faults, whether he was or was not aware of the existence of such faults in the goods bailed.

Examples:

- I. A lends a horse, which he knows vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damages sustained.
- II. A hires a carriage of B. the carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by Bailee:

Section 151 provides that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

In 'Nagalinga Chettiyar V. Kayarohana Chettiyar' – AIR 1915 Mad. 80 it was held that where the standard of care prescribed by Section 151 is not observed the bailee cannot be exonerated from his liability simply because the bailee's goods were also lost along with the goods bailed.

In 'Sirmour Truck Operations Union V. National Insurance Co. Limited' AIR 2011 (NOC) 389(HP) it was held that the carrier cannot be exempted from its own negligence or negligence by his agent where goods carried at 'owner's risk' and cannot escape from the liability to make good loss.

3. (a)

Dissolution by the court

Section 44 of the Indian Partnership Act, 1932 prescribes the grounds on which the Court may direct dissolution of a firm in a suit as discussed below:

- 1 if a partner has become of unsound mind;
- 2 if a partner has become permanently incapable of performing his duties as partner;
- 3 if a partner is guilty of conduct which is likely to affect prejudicially the carrying on of business, regarding being had to the nature of business;
- 4 if a partner wilfully or persistently commits breach of agreements relating to-
 - I. the management of the affairs of the firm or the conduct of its business; or
 - II. the conduct of its business; or
- III. otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
5. If a partner has in any way-

- transferred the whole of his interest in the firm to a third party; or
 - has allowed his share to be charged; or
 - has allowed it to be sold in the recovery of the arrears of land revenue; or
 - of any dues recoverable as arrears of land revenue due by the partner;
6. the business of the firm cannot be carried on save at a loss; or
 7. on any other ground which renders it just and equitable that the firm should be dissolved.

3. (b)

Assignment of Negotiation Instruments

Assignment takes place where the holder of an instrument transfers it to another so as to confer a right on the transferee to receive the payment of the instrument. All negotiable instruments are choosing in action and as such are transferable by assignment without endorsement under sections 130-132 of the Transfer of property act. Assignment of a negotiable instrument is effected by writing without endorsement. The main feature of assignment is that the assignee obtains the right of the assignor. Therefore, if the assignor's title is defective assignee title will also be defective.

Difference between Negotiation and Assignment are as under:

Sl. No.	Negotiation	Assignment
1	Consideration is presumed until contrary is proved.	Consideration must be proved
2	If transferee is a holder in due course, he takes the instrument free from any defects.	Assignee's title is always subject to defences and equities between the original debtor and assignor.
3	Notice of transfer is not necessary.	Notice of assignment must be given
4	Negotiation is effected by delivery in case of instruments payable to bearer and by delivery and endorsement in case of instrument payable to order.	Assignment is effected only by writing
5	Transferee can sue the third party in his own name.	Assignee cannot sue the third party in his own name.
6	There are a number of presumptions in favour of holder in due courses	There are no such presumptions.

4. (a)

As per the provision of section 8 of the Factories Act, 1948 the state government may appoint a person possessing the prescribed qualifications to be inspector for the purpose of this Act and may also assign local limits as may be think fit by the said government.

As per section 9 of the Act, the following powers can be exercised by the inspector:

- 1 He may enter to any place which is used, or which has reason to believe is used as a factory,
- 2 He can examine the premises, plant, machinery, article or substance,
- 3 He may inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not and take on the spot statements of any person which he may consider necessary for such inquiry,
- 4 He can require the production of any document relating to factory,
- 5 He may seize or take copies of any register, record or other documents of any portion there of as he may consider necessary,
- 6 He can take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination
- 7 He can exercise any such other powers as may be prescribed.

4. (b)

Application for gratuity

Payment of Gratuity

Rule 7(1) provides that an employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form 'I' to the employer. Where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

Rule 7(2) provides that a nominee of an employee who is eligible for payment of gratuity under the second proviso to section 4 (1) of The Payment of Gratuity Act, 1972 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in Form 'J' to the employer. An application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

Rule 7(3) provides that a legal heir of an employee who is eligible for payment of gratuity under the second proviso to section 4 (1) of The payment of Gratuity Act, 1972 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' to the employer.

Rule 7(4) provides that where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

Rule 7(6) provides that an application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

Belated application

Rule 7(5) provides that an application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

5. (a)

Section 71(3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides the conditions for the issue of secured debentures. The conditions are as follows:

1. The date of redemption of secured debentures shall not exceed 10 years;
2. The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years:
 - Companies engaged in infrastructure projects;
 - Infrastructure Finance Companies
 - Infrastructure Debt Fund Non-Banking Financial Companies;
3. The issue shall be secured by the creation of charge, on the properties or assets of the company, having a
 - value which is sufficient for the due repayment of the amount of debentures and interest thereon;
4. The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription
 - of its debentures and not later than 60 days after the allotment of debentures;

5. A debenture deed shall be executed to protect the interest of debenture holders; and
6. The security for the debentures by way of a charge or mortgage shall be created in favor of the debenture trustee on-
 - any specific movable property of the company; and
 - any specific immovable property wherever situate, or any interest therein.
7. In case of a non-banking financial company, the charge or mortgage may be created on any movable property.

In case any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement of creation of charge shall not apply.

5. (b)

Section 164 of the Companies Act, 2013 contains the disqualification of a person for the appointment as a director. As per this Section a person shall not be eligible for appointment as a Director of a company, if –

- 1 He is of unsound mind and stands so declared by a competent court,
- 2 He is an undischarged insolvent,
- 3 He has applied to be adjudicated as an insolvent and his application is pending,
- 4 He has been convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence,
- 5 A person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company,
- 6 An order disqualifying him for appointment as a director has been passed by the court or tribunal and the order is in force,
- 7 He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call
- 8 He has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years,
- 9 He has not complied with sub-section (3) of section 152.
- 10 He has not complied with the provisions of sub-section (1) of section 165.

6. (a)

The auditor's report shall also state–

- 1 whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;
- 2 whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- 3 whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- 4 whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- 5 whether, in his opinion, the financial statements comply with the accounting standards;
- 6 the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company
- 7 whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;

- 8 any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- 9 whether the company has adequate internal financial controls system with reference to financial statements in place and the operating effectiveness of such controls;
- 10 such other matters as may be prescribed.

6. (b)

A person who is a shareholder of a company has many rights under the Companies Act, 2013. Some of them are:

- (i) The right to vote at all meetings [Sec.47];
- (ii) The right to requisition an extraordinary general meeting of the company [Sec.100];
- (iii) The right to receive notice of a general meeting [Sec.101];
- (iv) The right to appoint proxy and inspect proxy register [Sec.105]
- (v) In the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
- (vi) The right to require the company to circulate resolution [Sec.111].
- (vii) To have certificate of share held ready for delivery to him within two months from the date of allotment [Sec.56]
- (viii) To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
- (ix) To inspect the Register of members and register of debenture-holders and get extracts therefrom [Sec.94].
- (x) To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
- (xi) To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
- (xii) To participate in the removal of directors by passing an ordinary resolution [Sec.169]

7. (a)

Nature of Business Ethics

Several factors play a role in the success of a company that is beyond the scope of financial statements alone. Organizational culture, management philosophy and ethics in business each have an impact on how well a business performs in the long term. No matter the size, industry or level of profitability of an organization, business ethics are one of the most important aspects of long-term success.

The management team sets the tone for how the entire company runs on a day-to-day basis. When the prevailing management philosophy is based on ethical practices and behavior, leaders within an organization can direct employees by example and guide them in making decisions that are not only beneficial to them as individuals, but also to the organization as a whole. Building on a foundation of ethical behavior helps create long lasting positive effects for a company, including the ability to attract and retain highly talented individuals and building and maintaining a positive reputation within the community. Running a business in an ethical manner from the top down builds a stronger bond between individuals on the management team, further creating stability within the company.

When management is leading an organization in an ethical manner, employees follow in those footsteps. Employees make better decisions in less time with business ethics as a guiding principle; this increases productivity and overall employee morale. When employees complete work in a way that is based on honesty and integrity, the whole organization benefits. Employees who work for a corporation that demands a high standard of business ethics in all facets of operations are more likely to perform their job duties at a higher level and are also more inclined to stay loyal to that organization.

7. (b)

Emotional intelligence affects

Your performance at school or work: High emotional intelligence can help you navigate the social complexities of the workplace, lead and motivate others, and excel in your career. In fact, when it comes to gauging important job candidates, many companies now rate emotional intelligence as important as technical ability and employ EQ testing before hiring.

Your physical health: If you're unable to manage your emotions, you are probably not managing your stress either. This can lead to serious health problems. Uncontrolled stress raises blood pressure, suppresses the immune system, increases the risk of heart attacks and strokes, contributes to infertility, and speeds up the aging process. The first step to improving emotional intelligence is to learn how to manage stress.

Your mental health: Uncontrolled emotions and stress can also impact your mental health, making you vulnerable to anxiety and depression. If you are unable to understand, get comfortable with, or manage your emotions, you'll also struggle to form strong relationships. This in turn can leave you feeling lonely and isolated and further exacerbate any mental health problems.

Your relationships: By understanding your emotions and how to control them, you're better able to express how you feel and understand how others are feeling. This allows you to communicate more effectively and forge stronger relationships, both at work and in your personal life.

8. (a)

Section 12 of the Indian Contract Act, 1872 provides that a person is said to be of sound mind for the purposes of making contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

In this case Mr. Amal when he made the contract in the evening of 15th July 2023, he was not capable of understanding the agreement and of forming rational judgment as to effect upon his interest.

As per the provision of the Indian Contract Act, 1872 Mr. Amal cannot contract whilst such drunkenness lasts.

Therefore, the contract between Mr. Amal and Mr. Bimal is not a valid contract.

8. (b)

The Board of Directors of ABC Ltd. need not to review and change its decision on the appointment of Mr. Barun as an additional director of the company, as there is no as such requirement of professional or academic qualifications for the person to be appointed as a director in any company as per the Companies Act, 2013.

Therefore, the court case filed by Mr. Arun, a shareholder, is not supportive and mere on the basis of the academic and professional qualifications of the person concerned cannot be appointed as a director.

The Companies Act, 2013 does not prescribe any academic or professional qualifications for directors. There is also no mandatory share qualification as per the Act, unless the Articles of Association of the company prescribes for the same.

Therefore, a director neither needs any minimum academic or professional qualification nor any share qualification unless the articles of a company suggest for the same.